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REGIONAL HEAD (PRODUCT OF A DEMOCRATIC SYSTEM) AS A ROLE MODEL AND ANTI-FRAUD REPRESENTATION

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ABSTRACT

The Constitution mandates that "Governors, Regents, and Mayors respectively as heads of provincial, regency, and municipal governments are elected democratically". In other words, the regional head is actually mandated to form a regional government as a democratic self-governing unit. The research method used is normative legal research and the types of data used are secondary data, consisting of primary legal material (various forms of legislation), secondary legal materials (data collection of scholarly work and the results research related to local election and anti-fraud systems), and tertiary legal materials (materials providing information on primary legal materials and secondary legal materials, such as dictionaries and encyclopedias). Data analysis technique used is technical qualitative analysis. In running the government mechanism, the regional head should be able to implement anti-fraud system. Anti-Fraud system is a system that monitors regulations or other mechanisms that produce some forms of report. In this case, the system offered in fact can have implications on anti fraud related to the position of regional head as a role model, that is, by bringing a great personality and optimization of thinking and action.

Keyword: Regional Head, Thinking and Acting, Great Person.

1. INTRODUCTION

One of the products of a democratic government system is the existence of direct general election. In the regional government, especially in autonomous regions in Indonesia, it is known as the election of Regional Head. The democratic system implemented in Indonesia respects the corridors that must be maintained so that it does not conflict with the 1945 Constitution of the Republic of Indonesia

According to Wirjono Prodjodikoro, the constitution contains fundamental rules regarding the pillars to support a

large building called the state. The pillars must certainly be strong and will not easily collapse, so that the building of the country remains firmly established.

The juridical basis of the regional head election, in the 1945 Constitution of the Republic of Indonesia, is contained in CHAPTER VI concerning Regional Government, that is, in Article 18 paragraph 4, which states that "Governors, Regents, and Mayors respectively as the heads of provincial, regency, and municipal governments are elected democratically." Interestingly, the use of the phrase "elected democratically" that

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can be interpreted as the direct election is in accordance with the Law on Regional Government which is firmly confirmed by the Constitutional Court through Decision of the Constitutional Court No. 072-073 / PUU-II / 2004.

Based on the interpretation of Constitutional Court, the phrase "elected democratically" means to authorize legislators to consider the right way in the elections. Even though direct elections have been determined to elect the President as formulated in Article 6A of the 1945 Constitution of the Republic of Indonesia, this cannot be interpreted that the regional head direct election becomes the only way to interpret the phrase "elected democratically" as outlined in Article 18 paragraph 4 of the 1945 Constitution of the Republic of Indonesia.

According to Taufiqurrahman Syahuri, the term "elected democratically" in the regional head election provisions also considers the implementation of regional head election in special regions as referred to in Article 18B paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which states "*the state recognizes and respects the special regional government units which are regulated by law*".

The regional head elections which are carried out indirectly can actually be interpreted as unconstitutional or contradictory to the 1945 Constitution of the Republic of Indonesia and the willingness to set the 1945 Constitution of the Republic of Indonesia itself. The regional head elections which are held directly are include in the sense of general elections because the principle and implementation of regional head elections are the same as in the presidential election. Moreover, one of the reasons for direct regional head elections is to create the same procedures and mechanisms between presidential elections and regional head elections such as Governors, Regents and Mayors.

According to Bagir Manan, Article 18 of the amended 1945 Constitution of the Republic of Indonesia is in line with the idea of forming regional government in

the region as an independent government unit in a democratic region. Bagir Manan further says that the de-concentration principle is an instrument of centralization, so it is a big mistake to place it in the regional government system which is the antithesis of centralization.

2. METHOD

This research belongs to normative legal research. The type of data used is secondary data consisting of primary legal materials (various forms of legislation), secondary legal materials (a collection of data from the scientific work of scholars and research results relating to regional head elections and anti-fraud systems), and tertiary legal materials (materials that provide information about primary legal materials and secondary legal materials, such as dictionaries and encyclopedias). After the data are collected and considered to be sufficiently complete, the next step is managing and analyzing the data. The data analysis technique used is qualitative analysis technique.

3. RESEARCH RESULT AND DISCUSSION

Regional Head Election as the Embodiment of Democracy

Democracy has been known since Greek times. The countries at the time were so small and only covered the city and its surroundings, called Polis. Therefore, deliberation on statehood was carried out by holding a large meeting, which involved the people and the government (the King), in a field. Thus, mutual understanding would be created between the people and the King because everything was organized and discussed together and there was no contradiction between the people and the government. This form of democracy is known as direct democracy. However, the democratic system that takes place today is multilevel democracy (representative).

Democracy includes: First, direct democracy, where all citizens directly choose and participate in thinking about the course of government, even everyone

participates in ruling, like the ancient Greek state. Second, representative democracy, where not all citizens are directly involved in the government, but they choose representatives among those who sit in representative bodies, such as Indonesia and the United States.

Jean Jacques Rousseau assumes that the state is a representative of the people, so the sovereign is the people, while the government is only the representative. If the government does not carry out its business in accordance with the wishes of the people, the government must be replaced. Popular sovereignty is based on public will, or "*Volonte generale*" (Rousseau). This is clearly applied in Indonesia, which is contained in the Constitution Article 1 paragraph 2 "*Sovereignty is in the hands of the people and is fully implemented according to the Constitution*".

Democracy (popular sovereignty - Volkssouvereniteit) is a system in society, state, and government which emphasizes the existence of power in the hands of the people in the administration of both the state and the government. The power in the hands of the people contains three meanings: government from the people, government by the people, and government for people.

In a democratic government, people can almost do whatever they like. Therefore, freedom dominates and the people are confused with all forms of their freedom. In a democracy, people seem to do whatever they like, but political freedom is not in the form of freedom without control. In a government, the people are governed by law, freedom is realized only in the form of power to do what we should do, and not be restrained to do what we should not do.

According to Moh. Mahfud M.D, there are two reasons for choosing democracy as a system of society and state. First, almost all countries in the world have made democracy a fundamental principle. Second, democracy as a state principle has essentially provided direction for the role of society to organize the state as the highest organization.

Democracy also requires observing whether a political order is a democratic system or not through a measure that is universally applicable in seeing whether a government regime is democratic or not. The measurement includes 1) Accountability, 2) Rotation of power, 3) Political recruitment, 4) General elections, and 5) Recognition and protection of basic rights.

There are three ideal values that support democracy as a life idea: freedom, equality, and justice. In the reality of life, the idea is realized through the symbols and the essence of the basic values of democracy. This means that the symbol, meaning, and nature of democracy truly represent or are lifted from the reality of life commensurate with the values themselves.

Idealized democracy must be placed in the corridor of law. Without law, democracy can even develop in the wrong direction because the law can be interpreted unilaterally by the authorities in the name of democracy. Therefore, a law-based democracy was developed, or commonly referred to as constitutional democracy. When associated with the principle of the rule of law (*rechtsstaat*), or generally known as *demokratische rechtsstaat*, it requires that the principle of the rule of law itself be carried out according to mutually agreed democratic procedures. The main point is that the democratic state must be based on law, and the legal state must be democratic.

In a horizontal perspective, the notion of constitutional democracy and a democratic law state (*demokratische rechtsstaat*) recognizes the following principles: 1) the existence of guarantee of equality, recognition and respect for plurality; 2) the existence of binding rules that are used as joint reference sources; 3) the existence of agreed mechanism for dispute resolution rules; 4) the existence of recognition and respect for human rights; 5) the existence of limitation of power through the mechanism of separation and division of power; 6) the existence of an independent and impartial judiciary; 7) the existence of a judicial institution that

is resolving on government decisions or policies; 8) the existence of a mechanism for judicial review by the judicial institution, or the making of a constitution and legislation governing these principles; and 9) the existence of recognition of the principle of legality or due process of law in the overall system of state administration.

According to R.G. Gettel, a government is called democratic government if it meets the requirements of democracy, among others: First, it must be supported by general consensus; Second, applicable law is made by elected representatives through a broad referendum or through elections; Third, the head of state is elected directly or indirectly through elections, and is accountable to the legislative council; Fourth, active voting rights are given to a large number of people on the basis of equality; Fifth, government positions must be carried out by all layers of the people.

When the conditions of democracy are linked to the system of government in Indonesia, there are two things that must be considered to always actualize a democratic system, including: First, the democratic system that has been confirmed through constitutional amendments must be followed by morality or enthusiasm of the state organizer to make it happen; Second, as an agreement product (*resultante*) born from certain conditions and times, the Constitution may not be closed from the possibility to be changed with the new resultant.

Indonesia is a democratic and legal state, in which both of them must move forward equally. Because law and democracy are singular, democracy must be protected by law so as not to lead to anarchism. On the other hand, the law must be based on democracy so as not to lead to authoritarianism, absolutism, or totalitarianism.

Regional Head is a Representation of Anti-Fraud

Fraud is generally interpreted as intentional cheating for personal gain or to bring down / destroy another party. The official

definition of fraud itself varies based on legal jurisdiction. But today, fraud is often analogized to all forms of actions that are prohibited based on regulations on corruption, collusion and nepotism.

Anti-Fraud is a mechanism or system that monitors regulations or other systems that produce several forms of reports. In this case, a system is offered which in fact can have an implication for anti-fraud, which is related to the position of regional head as a role model, that is, by presenting great personal and optimization of thinking and acting, as explained below:

a. Great Person Stage

Direct election of regional heads not only functions to fulfill the obligations of legislation, increase the participation of the autonomous region people to be aware of their political rights, carry out a celebration that is identical with the massive circulation of money, or ignite friction between fellow people, but also functions to stimulate the emergence of great individuals, so that they can deliver autonomous regions in accordance with the objectives of regional autonomy. However, with a variety of backgrounds, people are generally complacent with the nature of the implementation of regional head elections, so that they are often trapped nostalgically by a cradle told by a few interested people.

It is no longer something taboo if in the regional head elections, "old songs" are re-sung, both with negative and with positive pretensions. Ironically, the cradle of nostalgic traps often aligns the current regional head candidate with the ancestors.

To unite the paradigm, it is best to probe Hamka's views on personal meaning, which are defined as follows: First, a collection of personal traits and strengths that shows one's strength over others so that there are categories of big people and small people. There are people whose lives are very meaningful and some are not meaningful at all. Their existence and non-existence have no influence at all. Second, a collection of personal common sense,

will, ideas and body shape. These cause one's value to be different from others. Therefore, the high or low personality of individual is determined by the effort of his life, the way he thinks, the distance he sees, and the strength of his inner self.

Interestingly, in the life of society and the state there are several types of human characters. There is a person who is always ahead and there is a person who is always behind. In other words, there is someone who is proud to have a position as a "master" and there is someone who is proud to have a position as a "champion of the heart". So, the reality is that there is a person who sinks himself into the greatness of others.

In the context of the state, on one occasion Plato said about the state that could be analogous to the anatomy of the human body, namely: First, that human is categorized as an expert at thinking is like the brain in the country, which is valued as gold. Second, that human is categorized as the stakeholder or implementer of the mind is like the heart in the country, which is valued as silver. Third, that human who only moves his hands and feet is called merchants and peasants in the country, which is valued as copper.

Referring to the analogy, it could be possible to become an introspection material for the whole community that in the state life, each individual is in the same position. Therefore, Hamka says that the greatness existing in human beings can at least be reflected through several criteria: 1) having an appeal; 2) having intelligence and ingenuity; 3), having empathy; 4) being brave and wise; 5) having a good view; 6) knowing and believing in the self; 7) being wise in speaking; 8) having physical and spiritual health.

After the registration of candidates for regional heads, the contestation of regional head elections rolls in accordance with the rhythm played by the political elites of the autonomous region, including those who are at the top of political infrastructure. As a whole, they are competing with each other by polishing the figures shown to

attract as much sympathy and support as possible.

Typically, from time to time regional head elections are often shown in various autonomous regions. The figures of regional head candidates who appear on the stage of regional head elections are frequently not as described by the people in each autonomous region. Even great individuals must be eliminated through both the wishes of the party mechanism and the unavailability of political infrastructure facilities.

In some regions, the position of regional head is continued by his descendants. As if this justified the adagias that the regional heads were small kings in each autonomous region. Although this is not required through statutory norms, the public should have the awareness and belief that the form of a nostalgic trap in remembrance of the various figures and leadership styles of the ancestors of the past is not necessarily able to be fully explained and applied by the descendants.

Now, even though the candidates who have registered are considered not enough to represent the elements of a great person, it must still be understood that the candidates are great people who are able to formulate various dynamics and challenges, both from political infrastructure and from communities in their autonomous regions.

b. Optimizing Thinking and Acting

The leader in question is a leader who is at various levels of power in organizing government, whether he has a supra political, infra-political, or sub-structure position in society. Therefore, in principle, the behavior of the leader can reflect the characteristics of the people who cult him.

Today, in almost all lines of power, leaders are formed and born of the will of the community along with the competence and space given by the constitution to the community. The ability of the leaders to think and act, as a whole, is the responsibility of the community it self.

In Al-qur'an, various criteria and

conditions for being a leader are explicitly stated, as well as in the mandate of various laws and regulations. However, in organizing a government, a leader should be able to display his consistency in the form of: 1) before being sworn, a leader should think carefully and logically; 2) a leader must strengthen his mental and courage to take various actions that are considered to be orders from religious norms and legal norms; 3) a leader should be able to harmonize between the framework of thinking and various actions.

An adage "*I think then I am there*" reinforces that thinking is an activity that distinguishes between humans and other creatures. In line with the elements popularized by Jujun S. Sumantri about humans, that the leader could be classified into several criteria, including: 1) there are leaders who are able to think and act. This criterion is the most ideal and can even be assumed to be the most perfect level. This means that the leader is really able to think carefully in determining and formulating his actions as well as being able to implement his various thoughts; 2) there are leaders who are able to think but unable to act. This criterion can be assumed as the leaders who do not have the courage or in a forced state is not willing to act. This means that in principle the leaders are able to think carefully in determining and formulating their actions, but for one reason or another, their thoughts cannot be realized; 3) there are leaders who are unable to think but able to act. This criterion can be assumed as the leaders who are weak in thinking but having great courage and lust in acting. This means that sometimes there is a group of whisperers (team of experts / expert staff) who are milling around the leaders to help determine and formulate everything. And with full courage, the leaders implement their actions; 4) there are leaders who are unable to think and unable to act. This criterion can be assumed to be the worst criterion. We could imagine how much loss that will be experienced by the community, if they have a leader with these criteria. This means that in addition

to having a weak mind, he also does not have the courage to act. Many people categorize the leaders with such criteria as "the puppets" of other parties.

CONCLUSION

The Governors, Regents, and Mayors are the regional heads in the Provincial, Regency and City governments who are elected democratically. In principle, they have constitutional value and are in line with various doctrines of democracy, especially when interpreted as direct election.

The regional heads should be able to implement the anti-fraud system in running the government. Anti-Fraud is a mechanism or system that monitors regulations or other systems that produce several forms of reports. In this case, a system is offered which in fact can have anti-fraud implication, which is related to the position of regional head as a role model, that is, by presenting great personal and optimizing thinking and acting.

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